SUPREME COURT, U. S.

FILED

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JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1025

RICKY L. COCHRANE,
PETITIONER,

v.

HAROLD V. LANGLOIS, WARDEN,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF RHODE ISLAND

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INDEX

	Page
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statement Of The Case	2
Reasons For Granting The Writ	4
Conclusion	10
Appendix A: Opinion Below	11
Appendix B: 1956 General Laws of Rhode Island as amended Chapter 4—REFORM SCHOOL—Section 13-4-12 (1967)	13
Appendix C: Rhode Island Supreme Court, Provisional Order No. 7	14
Appendix D	17
Appendix E	19

Table of Authorities

Cases

Baxstrom v. *Herold*, 383 U. S. 107 (1966)	5
Carafas v. *LaVallee*, 391 U. S. 234 (1968)	8
Francis v. *Resweber*, 329 U. S. 459 (1947)	7
In Re Gault, 387 U. S. 1 (1967)	5, 7, 8
In Re Rich, 216 A.2d 266 (Vt. 1966)	6
In Re Whittington, 389 U. S. 819 (1968)	5
Herndon v. *Lowry*, 301 U. S. 242 (1937)	2
Kent v. *U. S.*, 383 U. S. 541 (1966)	5, 6, 7
Long v. *Langlois*, 93 R. I. 23; 170 A.2d 618 (1961)	5
Robinson v. *California*, 370 U. S. 660 (1962)	7
Sibron v. *New York*, 392 U. S. 40 (1968)	8, 9
State v. *Owens*, 416 P.2d 259 (Kansas 1966)	6

Certiorari has been granted from State Court's denial of Habeas Corpus in *Herndon* v. *Lowry*, 301 U.S. 242 (1937) and *Williams* v. *Kaiser*, 323 U.S. 471 (1945).

Questions Presented

1. Is a state statute which permits an administrative officer to transfer a minor who has been committed to a training school for boys to an adult penal institution for an indeterminate period without any hearing a violation of the 5th, 6th, 8th and 14th amendments to the United States Constitution?

2. Is the transfer by an administrative officer of a minor from a training school for boys to an adult penal institution purportedly in compliance with a state statute an unconstitutional application of the statute in violation of the 5th, 6th, 8th and 14th amendments to the United States Constitution?

3. Whether a Petition for Habeas Corpus directed to the Supreme Court of the State of Rhode Island on behalf of a minor of the age of 15 years who has been administratively transferred from a training school for minor boys to a penal institution for adults for a period of five months can be rendered moot after the Family Court transferred the minor boy back to the Training School subsequent to the filing of the petition for Habeas Corpus.

Statement of the Case

Petitioner, a minor born on March 15, 1952, was committed to the Rhode Island Training School for Boys on or about August 23, 1967, by the Family Court of the State of Rhode Island. On December 28, 1967, he was transferred to the Adult Correctional Institution by oral order and later by written order of the Brigadier Gen-

eral, Paul D. Sherman, Assistant Director of Correctional Services of the Department of Social Welfare, State of Rhode Island. Respondent Langlois is the Warden of the Adult Correctional Institution. The transfer was purportedly in compliance with Rhode Island G.L. 1956 Title 13-4-12 as amended.

The transfer was made because the Petitioner and others allegedly destroyed portions of a cottage used at the institution for disciplinary confinement. Upon transfer petitioner was immediately put in the "Hole." He was kept there alone for 32 days. He lost about 24-25 pounds. He was then transferred to the Segregation Block of Medium Security for about four or five days. On January 30, 1968 he was transferred to the Maximum Security Section where he was kept with about 94 adult inmates until at least June 5, 1968. He saw a psychiatrist once. He saw a counselor once every two weeks. (Petitioner's Affidavit dated April 16, 1968 and June 3, 1968) On June 5, 1968, the Family Court ordered the Petitioner returned to the Training School and on July 17, 1968 it released him, placing him on probation until its further order. (Decision of Rhode Island Supreme Court). However, on June 5, 1968, the very same day the Family Court ordered his return to the Training School, he was remanded back to the Adult Penal Institution. (See letter of Senior Counselor dated 12/12/68 attached herewith; said letter also demonstrates the Petitioner's continued incarceration in the penal institution on various occasions subsequent to June 5, 1968).

The petition for Habeas Corpus to the Rhode Island Supreme Court was filed on April 15, 1968, while Petitioner was still confined in the Adult Penal institution. The petition for Habeas Corpus alleges violation of federal constitutional rights. On April 23, 1968, the Respondent was directed to file his Answer to the Petition for Habeas

Corpus and to show cause why the Writ should not issue as prayed. Said answer is to be in compliance with Provisional Order No. 7 of the Rhode Island Supreme Court. Provisional Order No. 7 provides that the answer shall be filed within fifteen days unless the time is enlarged by the Court or a Justice thereof. On May 9, 1968, Respondent moved for an enlargement of time. An Ex Parte order was entered extending the time for Respondent's Answer to May 22, 1968, at which time the answer was filed. Within the ten days allowed by Provisional Order No. 7, on June 3, 1968, the Petitioner's attorney filed his reply to Respondent's Answer. On June 11, 1968, the Supreme Court entered an Order granting the Petition for a Writ of Habeas Corpus and the Writ issued directed to the Respondents returnable July 2, 1968. On June 13, 1968, Petitioner moved for a special assignment because Petitioner was still incarcerated in the Adult Correctional Institution and because Rules 13 and 15 of the Rhode Island Supreme Court's rules would have prohibited the matter from being heard before late in the fall session of the Court. This motion was denied by the Court on June 19, 1968. Thereafter, on the 28th day of June, 1968, Petitioner filed a Motion to reinstate the Motion for Special Assignment. This motion was granted by Court on the 9th day of July, 1968 and the matter was assigned "for hearing on the merits to the calendar for the first Monday in October, 1968." The merits were argued on October 7, 1968 and the per curiam decision dismissing the Petition because of mootness was filed on October 28, 1968.

Reasons for Granting the Writ

1. It is submitted that Section 13-4-12 of the Rhode Island General Laws of 1956, as amended, is unconstitu-

tional on its face and as applied in violation of the 5th, 6th, and 14th amendments to the United States Constitution.

Prior to an amendment in 1963 which required the administrator to merely notify the Family Court of the transfer. The Rhode Island Supreme Court upheld the statute and the transfer procedure. *Long* v. *Langlois*, 93 R.I. 23; 170 A.2d 618, decided May 18, 1961. However, *Long* v. *Langlois* was decided before *Kent* v. *U.S.*, 383 U.S. 541 (1966); *In Re Gault*, 387 U.S. 1 (1967). *In Re Whittington*, 389 U.S. 819 (1968). Neither the statute nor the application of the statute which permits the transference of a juvenile without a hearing meets the requirements of the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution.

If *Kent* stands for the proposition that a juvenile is entitled to a hearing on waiver from a juvenile court to an adult court, then *Kent* must also require a hearing before transfer from a non-penal institution to a penal institution, a jail for criminals. If *Gault* requires Fifth and Sixth Amendment guaranties to be afforded to minors before they can be ultimately detained as delinquents, then *Gault* just as surely requires that minors must be afforded Fifth and Sixth Amendment guarantees before they can be confined as criminals in criminal or penal institutions. For in essence, petitioner is indeed being punished, without a trial, without a hearing or without a benefit of counsel, because of allegedly violent, destructive and most assuredly criminal acts for which he can be charged and convicted.

Petitioner contends that the statute which permits an administrative official to impose punishment is as unconstitutional as was the statute considered by this Court in *Baxstrom* v. *Harold*, 383 U.S. 107 (1966). In *Baxstrom* this Court stated:

> "Petitioner was further denied equal protection of the law by his civil committment to an institution maintained by the Department of Correction beyond the expiration of his prison term without a judicial determination that he is dangerously mentally ill such as that afforded to all so committed except those, like Baxstrom nearing the expiration of a penal sentence."

Such is the case here whereby the petitioner was transferred from a non-penal to a penal institution upon the invocation of administrative discretion without a judicial determination.

Several jurisdictions, even prior to *Kent*, have held that similar statutory provisions permitting administrative transfers are contrary to the constitution. *White* v. *Reid*, 126 F. Supp. 867 (Dec. 1954); *In Re Rich*, 216 A.2d 266 (Vt. 1966). In *State* v. *Owens*, 416 P.2d 259 (Kansas 1966), considering *Kent*, the Court said:

> "We hold confinement in a penal institution will convert the proceedings from juvenile to criminal and require the observance of constitutional safeguards. The non-criminal aspect is the legal backbone of the constitutionality of all American Juvenile Court legislation. If after juvenile proceeding, the juvenile can be committed to a place of penal servitude, the entire claim of *parens patriae* becomes a hypocritical mockery. Such action confines a person in a penal institution without having been found guilty of a crime." 416 P.2d at page 269.

And in the Vermont case the Court said:

> "To this end we hold that any transfer from Weeks School to a penal institution must be founded upon

> a criminal prosecution and conviction attended by the constitutional guarantees appropriate to such a proceeding. Transfers under the authority of 28 V.S.A. Sec. 415 can constitutionally be made only under such circumstances." 216 A.2d at page 270.

Such tranfers and the lack of due process involved was noted by Mr. Justice Fortas in *Gault* supra at page 20, note 26, when he pointed out that "The impact of denying fundamental procedural due process to juveniles involved in 'delinquency' charges is dramatized by the following considerations . . . (3) In about one-half of the States a juvenile may be transferred to an adult penal institution after a juvenile court has found him 'delinquent'."

2. It is further submitted that transfer and the committment of the petitioner to the "Hole" for 32 days and his subsequent confinement as set forth in his affidavit without any attempts at rehabilitation amounts to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution applicable to the States through the due process and equal protection clauses of the Fourteenth Amendment. *Robinson v. California,* 370 U.S. 660, 666 (1962). *Francis* v. *Resweber,* 329 U.S. 459, 463 (1947).

In *Kent* the Court emphatically stated that "In our penal system, a juvenile shall not be jailed along with adults except in the rarest of circumstances" *383 U. S. at 556.* Discussing the power of punishment, this Court stated in *Trop* v. *Dulles,* 356 U.S. 86 (1958) that the power must be exercised within the limits of civilized standards. "The Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society" 356 U.S. at 101.

This petition is pertinent because were the practice of unchecked administrative handling of juveniles to continue,

the goals envisioned by the creation of the juvenile court system as discussed by Justice Black in his concurring opinion in *Gault* will continue to be just goals and not the mark of progress in a maturing society. *387 U.S. at 60.*

The imposition of criminal punishment at the instance of an administrative officer far greater than that imposed by the Juvenile Court, whereby a juvenile was exposed to the forms of punishment used to reform hardened criminals constitutes action which is not only contrary to the notion of juvenile rehabilitation, but will leave an indelible impression of the concept of a "just society" in the mind of a juvenile which might never be eradicated.

3. Petitioner, in seeking a release from a penal institution in which he had been confined without the benefit of a charge, arraignment, counsel, hearing, or trial, but nevertheless held as a criminal, was denied the opportunity for a review as to the constitutionality of such a five-months incarceration on the grounds of mootness. This Court only last June decided *Carafas* v. *LaVallee,* 391 U.S. 234 (1968) and *Sibron* v. *New York,* 392 U.S. 40 (1968). In *Carafas,* this Court held that Federal Habeas Corpus Jurisdiction did not terminate because the Petitioner's sentence had expired before his application "was finally adjudicated and while it was awaiting appellate review." In *Sibron,* on appeal from a judgment of the New York Court of Appeals, the fact that a six-months sentence had been served did not render the case moot. "Mere release of the prisoner does not mechanically foreclose conside ation of the merits by this Court." *Sibron,* supra, 392 U.S. 51. Nor should release foreclose consideration by a State Court particularly where there are important allegations of the violation of Federal Constitutional rights as well as a complete lack of any other "avenue of judicial review of deprivations of constitutional right." *Sibron,* supra, 392 U.S. at page 52.

Not only will Petitioner here sustain collateral consequences as a result of his committment to an adult penal institution but as demonstrated in the record he will suffer more direct consequences. The letter of the Training School dated December 12, 1968 shows that whenever he is apprehended or detained by the Family Court, the administrators transferred him to the Adult Penal Institutions. This is likely to continue. Certainly then this case meets the test for survival, *Sibron,* supra, 393 U.S. at page 55.

The validity of the Statute and the validity of the actions of the administrative officers can never be challenged unless the juvenile is permitted to remain in the penal institution while his case is being processed to the appellate court. This was recognized by Rhode Island Family Court Justice Michael DeCiantis in another such case. (In the matter of Tilden Brown Jr. No. W-5136- decided 11/13/68, reported in part in 4 Criminal Law Reporter 2203-2204). Referring to the statute in question, Judge DeCiantis said:

> "Another shocking situation that arises under this law is that the Court finds itself in the predicament of 'locking the barn door after the horse had been stolen' because the juvenile may be returned to the Training School before or while a petition is pending for hearing before this Court. The question then becomes moot. If the juvenile or the parents or the guardian desire that the question of validity of the transfer be decided by the higher tribunal, it can only be accomplished by allowing the juvenile to linger in a penal institution. This would seem to force the juvenile to forego his constitutional right to appeal in order to exercise his constitutional right to be free from cruel and unusual punishment."

Conclusion

For the reasons set forth above, certiorari should be granted.

Respectfully submitted,

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02903
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APPENDIX A

SUPREME COURT

No. 423 - M. P.

RICKY L. COCHRANE,

v.

HAROLD V. LANGLOIS, WARDEN, ET AL.

OPINION

PER CURIAM. This is a petition for a writ of habeas corpus directed to the warden of the adult correctional institutions and to the assistant director of social welfare in charge of correctional services. After our examination of the petition, we ordered the respondents to show cause why the writ should not issue. The respondents appeared and filed an answer.

The petitioner is a 16-year-old boy who prays that he be released from the state prison because his incarceration violates certain of his constitutional rights and accordingly is illegal. In their answer, respondents admit that petitioner is confined at the prison but deny that petitioner's detention is illegal in any respect. In defending their actions, respondents point to the provisions of G.L. 1956, § *13-4-12*, as amended, which provide that any individual who has been committed to the training school for boys may be transferred by the assistant director of social welfare in charge of correctional services to the adult correctional institutions whenever this official believes that such a transfer will best serve the purpose of "reforming" the boy. The respondents' answer shows that in October 1967, petitioner had been adjudged a delinquent by the family court and was committed to the training school until fur-

ther order of the court. On December 28, 1967, respondent assistant director witnessed petitioner and other inmates at the school as they wilfully destroyed certain portions of a cottage used at the institution for disciplinary confinement. This respondent thereupon ordered petitioner to be transferred to the prison and pursuant to the provisions of § 13-4-12, as amended, notified the family court of his action. Some months later, the instant petition was filed with us. On June 11, 1968, we ordered the writ herein to issue.

In their supplementary brief and at oral argument before us on October 7, 1968, the respondents informed this court that the petitioner had been released from the adult correctional institutions as the result of certain proceedings instituted in the family court. The pertinent records of that tribunal have been furnished to us and we have verified the respondents' representations. The records show that on June 5, 1968, the family court ordered the petitioner returned to the training school. Subsequently the court entered an order on July 17, 1968, releasing the petitioner from the training school and placing him on probation until its further order. Therefore, we are of the opinion that the actions of the family court have rendered moot any issues raised by the instant petition.

The petition for habeas corpus is denied and dismissed and the writ heretofore issue is quashed.

APPENDIX B

CHAPTER 4-REFORM SCHOOL

13-4-12 Transfer Of Inmates To And From Other Institutions. (1956 G.L. As Amended)

The assistant director of social welfare in charge of correctional services may in his discretion transfer any inmate of the training school for boys to the adult correctional institutions when he believes that such transfer will best serve the purpose of reforming such inmate, and in like manner in his discretion may transfer any inmate of said institutions to the training school for boys. Whenever said assistant director shall cause such transfer to be made, he shall, within forty-eight (48) hours thereof, notify the family court of such action together with the reasons therefor, and he shall report on the status of any such inmate so transferred whenever requested by the family court. Any inmate transferred to the adult correctional institutions as herein provided shall be kept separate and apart from the adult inmates in so far as such separation shall be deemed for the best interest of the minor inmate.

APPENDIX C

The Supreme Court of the State of Rhode Island and Providence Plantations, pursuant to the provisions of G. L. 1956, § 8-3-2, does make and hereby publish a provisional order as follows for the regulation of practice therein and the conduct of the business thereof, to become effective on the thirtieth day of September A. D. 1966, and to remain and continue in effect thereafter until altered or revoked by further order:

PROVISIONAL ORDER NO. 7

The following procedures shall be followed in the event that the Court, upon the filing of an application for a writ of habeas corpus, shall direct the respondent to show cause why the writ should not issue:

(a) Within fifteen (15) days (unless enlarged by the Court or a Justice thereof) after he shall have received notice of the entry of the show cause order, the respondent shall file in the office of the Clerk of the Supreme Court a signed answer under oath in which, in addition to the factual matter required to be included in a return to a writ of habeas corpus pursuant to G.L. 1956, § 10-9-8, he shall set forth a statement with particularity of any additional facts upon which he justifies his detention of the applicant, and further serve a copy of said answer upon the applicant or his attorney of record, if he has one. He shall append thereto a memorandum of law setting forth his reasons why the writ, application for which has been made, should not issue together with citations of authorities in support thereof.

(b) The applicant or his attorney within ten (10) days (unless enlarged by the Court or a Justice thereof) after receipt of the answer and memorandum shall, if he desires to controvert or reply to any of the matters set forth in the answer, file in the office of the Cerk of the Supreme Court

a signed reply under oath disclosing any matter or ground in further support of his application and/or in denial of the facts set forth in the answer, and further serve a copy of said reply upon the respondent or his attorney of record, if he has one. He shall append thereto a memorandum of law setting forth his reasons why the writ should issue or his release should be ordered together with citations of authorities in support thereof.

(c) All answers or replies filed pursuant to the provisions hereof in the office of the Clerk of the Supreme Court shall be accompanied by nine copies, provided, however, that the requirement for the filing of copies shall be waived if the person filing a reply is without counsel and if, because of the place of his detention, the preparation of copies is not feasible.

(d) Wherever it is provided herein that service shall be made upon the opposing party or his attorney of record it shall be by delivery to the person to be served or by leaving the same at his office with some person in charge thereof or by mailing the same by certified or registered mail, return receipt requested. A certificate of compliance with the notice requirements hereof, signed either by the party or his attorney, shall accompany any answer or reply filed in the Clerk's office pursuant to this rule.

(e) Upon the granting or denying of the writ or the ordering of the release of the applicant, an appropriate order will be entered, and the Clerk will notify counsel of record. If the application for the writ shall be granted, the writ and appropriate process shall issue and the cause shall then, without the necessity of either party filing any further pleadings, be considered as docketed on the return day and shall thereafter be assigned for hearing pursuant to the provisions of Rule 13, and the briefs of the respective parties shall be filed pursuant to Rule 15.

Entered as the Order of this Court this thirtieth day of September, 1966.

. . . . . .

Clerk of the Court

APPENDIX D

[LETTERHEAD — RHODE ISLAND TRAINING SCHOOL FOR BOYS]

December 12, 1968

Mr. Philip Weinstein
Abedon, Michaelson, Stanaber, and Biener
626 Industrial Bank Building
Providence, Rhode Island
Re: COCHRANE, Ricky L. #18510
Dear Mr. Weinstein:

The following is a summary of the transactions that took place from the month of June to the present time:

On June 5, 1968 Ricky was returned to the Training School from the Adult Correctional Institution, where he was since December 28, 1967. On the same day (June 5, 1968) he was discharged. Then again on the same day he was remanded to the Training School and then transferred to the A.C.I. On June 26, 1968 he was returned to the Training School and discharged on the same day. On July 17, 1968 he was returned here and then discharged (same day). On August 30, 1968 he was re-detained by the Family Court until September 3, 1968, when he was discharged. Then on September 3, 1968 he went to the A.C.I., from where he was discharged on September 11, 1968. On the same day (September 11, 1968) he was remanded to the A.C.I.; and Ricky was discharged on September 17, 1968.

On October 1, 1968 he was re-detained by the Family Court until later on that day, when he was transferred to the A.C.I. He went to the Family Court from the A.C.I., and he was discharged on October 9, 1968. On the same day (October 9, 1968) he was remanded to the Training

School. On October 12, 1968 he ran away and since then has not returned; therefore, in our books he is still on a runway status.

Very truly yours,

(s) JAMES PRENDERGAST
JAMES PRENDERGAST
Senior Counselor

JP:ok

APPENDIX E

[Typewritten From The Handwritten Copy]

AFFIDAVIT

I, Rickie A. Cochrane, on oath depose and say:

I was born on March 14, 1952; I was committed to the Training School by the Family Court in October, 1967. I was transferred to the Adult Correctional Institution on December 27, 1967 and was immediately put in the "HOLE." I was there for 32 days. During this time I lost about 24-25 pounds. I was alone in a small room about 4 feet by 6 feet. I was not permitted any reading matter, cigaretts, tooth paste, nor was I permitted to wash or shower but for every ten (10) days. After I got out of the "HOLE," I was put into the Segregation Block of Medium Security, I was there for about four (4) or five (5) days. I was brought over to the Maximum Security on January 30, 1968 where I have been ever since in the Awaiting Trial Section. I am with about 94 other inmates who are awaiting trial on various charges. I am in a cell by myself all day except between the hours of 4 to 9 P.M. every day when we are permitted to watch television at which time I am with all the other inmates who are awaiting trial. On week-ends, all awaiting trial people are permitted to go into the yard for exercise. I could go to the gym every day, but I am afraid to do so because you would have to go with the regular inmates. I do nothing all day long but sit in my cell. I am not seeing any psychiatrists nor have any tests been done on me. I see a counselor about once every two weeks.

I don't feel I belong here — I don't think I am being

helped here. I want to get help but nobody is doing anything to help me here. I have gone through the eighth grade in school. I was expelled from Gilbert Stuart Junior High School. I tried to get some mechanical training through Progress For Providence but then I was sent to the training school. I asked to be taught a trade at the training school but the Superintendent told me they had no trades and that I would have to wait until I got out.

I have read these two pages and believe they are the truth.

.....

RICKIE A. COCHRANE

Subscribed and sworn to before me this 16th day of April, A.D. 1968.

(s) MILTON STANZLER
Notary Public

AFFIDAVIT

I, RICKIE COCHRANE on oath depose and say:

That I have had the Respondent's Answer read to me; that only the point of which I have knowledge and which I desire to controvert are as follows:

There were no lights in the cell in the Hole and there was no bed in the cell which I occupied in the Hole; during confinement in the Hole I saw no doctor and the meals did not appear to be the regular meals; that after being taken from the Hole, I was placed in Segregation unit at the reformatory for about one (1) week before being transferred to Maximum Security; I have had no counsel-

ling since mid April; I have seen a psychiatrist once since then for ten (10) minutes.

(s) RICKIE COCHRANE

Subscribed and sworn to before me this 3rd day of June, 1968.

(s) MILTON STANZLER
Notary Public